FOR MYSORE STATE

Passed

Home (1953) Department.

RT SERIES.

G.O. NO. 46

Dated 6-1-1953

[Despatch Abstract.]

M. L. Dis. 8546/52

S.K.Dt.Magistrate's Office,
Mangalore dated 26.11.1952.

From -

Sri C. A. Ramakrishnan I.C.S.,
District Magistrate, South Kanara.

To

The Secretary to Government,
Home Department, Fort St.George,
Madras 9.

Sir, 224122/52

PUBLIC SERVICES:- Prosecuting staff - South Kanara District - Sri K. Anthappa - Dismissed from service - Memorial.

pp5-5 ********** pp62-69

I enclose a memorial of Sri K. Anthappa B.A.B.I., against the order of dismissal passed by the Government in G.O.Ms. No.383 Home Department dated 31.1.1952.

2. I have no remarks to offer.

Yours faithfully,

For District Magistrate.

mn.27.11.

M.L.Dis. 6413/52.
Proceedings of the District Magistrate of South Kanara d/15-11-1952.
Sri C.A.Ramakrishnan I.C.S.,
****

PUBLIC SERVICES:A.P.Ps Sri K.Anthappa Ex.A.P.P.II
Appeal petition to Government- returned-

Ref:D.M's memo Ref.C3. 6413/52 dated 10-9;1952.
****

In the Dt.Magistrate's memo. cited sent by A.P. Sri K.Anthappa was requested to send the Government memo. No 135692 Courts III 52-1 dated 20-8-1952 with reference to which the appeal was submitted by him through the Dt.Magistrate. As no reply has so far been received from him to the memo referred to above, his appeal petition is returned to him. It will be forwarded to the Government if he sends a copy of the Government memo. referred to above.

/by order/ 19/11
Magl.Head Clerk.

To
Sri K.Anthappa P.A.(B.L.,
Venkappa Garden,
Kadri Road,
Mangalore By R.P.
with the appeal petition

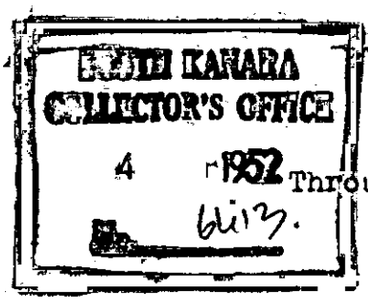
mv 18-11-

M a n g a l o r e,
The 3rd September, 1952.

From

K. Anthappa, B.A., B.L.,
Ex-Assistant Public Prosecutor Grade II, South Kanara,
"Venkappa Gardens", Kadri Road,
Kadri, MANGALORE-3.

To



The Secretary to Government,
Home Department,
Government of Madras,
MADRAS.

Through

The District Magistrate of South Kanara,
MANGALORE.

M E M O R I A L.

Sir,

In obedience to the orders of the Government of Madras, Home Department, in Memorandum No.135692 Courts III/52-1, dated 20th August,1952, I beg to submit this memorial through the District Magistrate of South Kanara.

With reference to the orders of the Government of Madras in G.O.Ms.383, Home Department, dated 31-1-1952, dismissing me from service as Assistant Public Prosecutor Grade II, I beg to submit this memorial with the prayer that this drastic punishment, ruining my whole future career, may be modified, so as to afford me a chance to rehabilitate myself and earn an honourable living, on a kind consideratio of the following grounds:-

1. The punishment of dismissal awarded is unduly severe, having regard to the following facts:-

(a) The learned District Judge of South Kanara, who held the enquiry in respect of the charges against me, after finding me guilty of only four out of the six charges of corruption, made the specific recommendation that "COMPULSORY RETIREMENT RATHER THAN DISMISSAL OR REMOVAL FROM SERVICE WOULD BE ADEQUATE AND APPROPRIATE PUNISHMENT FOR ACTS OF CORRUPTION PROVED" against me, as will be clear from paras 13 and 14 of the learned Judge's findings, which

are quoted below in extenso:-

" 13. Coming to the question of punishment, it may not be entirely out of place to note that the money was offered to the Officer and accepted by him ostensibly not so much to do any illegal act or to omit to do any act that he was legally bound to do in discharge of his official duties. The money was, according to the evidence, paid to him and received by him to serve as incentive to devote greater care and attention in the discharge of the duties that he was by virtue of his office bound to do honestly and efficiently. Though this aspect of the illegal acts concerned in the charges cannot in any way alter the essential character of the officer's misdemeanour, it may reasonably affect the degree of the gravity of the same.

"14. An Officer guilty of systematic acts of corruption is not surely fit to be continued in service. But having regard to the particular aspect of the officer's acts of misconduct adverted to above, I should deem that <u>compulsory retirement rather than dismissal or removal from service would be adequate and appropriate punishment for the acts of corruption proved in this case</u>. Thus while finding the officer guilty of the charges under four out of the six counts, I WOULD RECOMMEND ONLY A MORE LENIENT PUNISHMENT OF COMPULSORY RETIREMENT OF THE OFFICER."

(b) The Government, while fully agreeing with the findings of the learned District Judge on the charges, has rejected his specific recommendation for the "more lenient punishment of compulsory retirement.".

(c) The only ground on which the Government has rejected the learned Judge's recommendation for lenient punishment was that the Public Service Commission "disagrees with the District Judge in his recommendation that lenient punishment be accorded to the accused officer. In the Commission's opinion he deserves dismissal. It accordingly recommends that the accused officer be dismissed from service."

(d) With all respect, I beg to submit that the recommendation of the learned District Judge, who personally held enquiry and was fully seized of all the relevant facts and circumstances of the case, was entitled to great weight, though, unfortunately for me, the detailed reasons given by the learned Judge in favour of his specific recommendation have been brushed aside without any attempt to meet them.

(e) A reference to the record of my service will also show that the punishment of dismissal is undily severe and not really called for in this case. Having been enlisted as a Sub-Inspector of Police in 1930 and worked in the Police

department for 14 years till 1944, I was appointed as Assistant Public Prosecutor in 1944, and worked in this capacity for over six years till 1950. Up to the date of the present charges, my work, character and conduct throughout the long period of 20 years from 1930 to 1950 were satisfactory. Having regard to this long period of my loyal service, I beg to submit most humbly that my case calls for merciful treatment.

2. Having thus far shown that the punishment of dismissal awarded to me is unduly severe, I beg to make it clear that I am not attempting in this memorial to question the correctness of the findings on the merits of the charges against me; but, I am only praying for merciful treatment on a kind consideration of my satisfactory service of 20 years.

3. I am a law Graduate; and, I was practising as a lawyer from 1920 to 1930 when I joined the Police. But for the order of dismissal, I can resume practice and eke out my living working as a lawyer, and so rehabilitate myself by turning over a new leaf and making amends for all my failures of the past by devoting my future life to the honourable service of the public.

4. I am already 48 years old, and at this age I cannot advantageously take up any profession other than that of a lawyer.

5. Having suffered a severe motor accident in 1941, I am also unable to take up any work involving physical strain.

6. I have three children, all of them studying in Colleges. Since my dismissal I have been unemployed and without adequate means of livelihood.

7. Having been under suspension pending enquiry into the charges against me from 22-8-1950 till 31-1-52 when I was dismissed from service, and having been unemployed

since my dismissal, I have lost all means of subsistence. Life in my present circumstances is unbearable: for. besides the dire poverty to which I and my family have been reduced, the long period of enforced idleness, for over two years since 22-8-1950 up to date, with its strain of acute mental depression is hourly threatening to undermine my health.

8. I pray that all the above facts may be considered sympathetically, and that mercy may be shown to me.

9. I cast myself absolutely on your mercy, praying that the punishment of dismissal awarded to me in G.O.Ms.383, Home Department, dated 31-1-1952 may be set aside, and that I may be retired from service, and so enabled to atone for any past misconduct on my part and to earn an honourable living in the future.

Praying for early and favourable orders, for which I and my family will be ever grateful.

Yours faithfully,

Memorialist.

Enclosures:-

1. Government of Madras Home Department Memorandum No. 117164 Courts III/50-10, dated 19-7-51 with copy of the findings of the District Judge, South Kanara, in his Dis.No.2331/1951, dated 20-4-51.
2. Home Department G.O.Ms.No.383, dated 31-1-1952 with annexure.

9

HOME DEPARTMENT

G.O.R.No. 46 dated 6.1.53.

PUBLIC SERVICES - Prosecuting staff - South Kanara district - Anthappa, Sri K. - Petition to set aside the order of dismissal issued in G.O.No. 383, Home, dated 31-1-1952 - Rejected.

Read:- From the District Magistrate, South Kanara, M.L.Dis. 8546/52, dated 26-11-1952.

—***

ORDER:

The petitioner should be informed that his petition dated 3-9-1952 on the subject cited is rejected.

To
The Collector of
South Kanara.

CW 022 (4122/52

Home (Cts.III) Department

Public Services - Prosecuting Staff - South Kanara Dt. - Sri Anthappa, A.P.P. Gr. II - Dismissed - Memorial.

From the D.M., South Kanara M.L. Dis. 8546/52, dated 26-11-52.

p1 cf

Please see the letter from the D.M., South Kanara at p. 1 c.f.

p12 m.b cf (N)

2. Sri Anthappa, the petitioner, was an A.P.P. Grade II in South Kanara Dt. He was first appointed on 1-4-1944 by transfer from the Police Subordinate Service. He had put in a service of over 6 years as A.P.P. Gr.II.

pp 3-4 cf (N)

3. On the basis of certain allegations of corruption made against Sri Anthappa in April 1950, the X Branch was asked to conduct an enquiry into his conduct. The X Branch had reported that there was ample evidence to hold a departmental enquiry against the A.P.P. With the concurrence of the High Court, the Dt. Judge, South Kanara was asked to enquire into the allegations of corruption against Sri Anthappa. The Dt. Judge framed 6 charges against Sri Anthappa as extracted on pp. 9-10 n.f. of (N). The Dt. Judge found Sri Anthappa guilty of four out of the six charges. As regards punishment, the Dt. Judge considered that having regard to the particular aspect of the officer's misconduct, compulsory retirement rather than removal from service, would be adequate and appropriate punishment for the acts of corruption proved against him. He therefore recommended only more lenient punishment of compulsory retirement. The Madras Public Service Commission however advised that in its opinion Sri Anthappa deserved dismissal from service and accordingly recommended

p19 cf (N)

p23 cf (N)

p25-29 cf (N)

para 2, pp32-34 cf (N)

para 12, p40 cf (N)

para 14, p41 cf ibid

p65 cf (N)

that he might be dismissed from service. The Govt. agreed with its recommendation and directed in G.O. Ms. No. 383, Home, dated 31.1.52 that he be dismissed from service from 22-8-1950.

4. In July 1952 Sri Anthappa submitted a memorial to Govt. in which he praved that this drastic punishment ruining his whole career might be modified to that of compulsory retirement. He contended that the Dt. Judge's recommendation was entitled to great weight, as the Dt. Judge had personally held enquiries and was fully seized of all the relevant facts of the case and that the Govt. agreeing with the M.P.S.C. had brushed aside the recommendation of the Dt. Judge. He also made it clear that he was not attempting to question the correctness of the findings or the merits of the charges but only praying for merciful treatment in view of his satisfactory service for 20 years.

5. It was then noted that the petition was not submitted through the proper channel, i.e., through the Collr. as required under Sectt. Instructions regarding submission and receipt of petitions and other papers of the same class addressed to the Govt. of Madras and therefore it was liable to summary rejection. His petition was accordingly rejected - pl. see Memo. at pp. 7-8 c.f. of (V)

6. Sri Anthappa has now put in a memorial through the D.M., South Kanara. The memorial is at pp. 5-8 c.f. He has merely reiterated his requests which he originally made in the petition referred to in paras 4-5 above. The D.M., South Kanara has not that he has no remarks to offer on the memorial.

It will be sen from para 9 of his memorial at p. 6 c.f. that the memorialist does not

deny the charges made against him. He does not question the correctness of the findings or the merits of the charges but only prays for merciful treatment on a kind consideration of his satisfactory service of 20 years. He adds that but for the order of dismissal he can resume practice, eke out his living working as a lawyer and so rehabilitate himself by making amends for his failures in the past.

Under sec. 13 read with sec. 6 of the Legal Practioners' Act, 1879, the High Court alone can ~~practice~~ suspend or dismiss a pleader from practice at the Bar. Dismissal from Govt. service cannot, it seems, debar a person from practising at the Bar. His statement at A above does not appear to be correct.

The time for appeal in this case expired on 7-4-52 as the petitioner did not exercise that right of appeal

He has got a right of submitting a memorial to the Governor until 6 months from the date of the order passed and communicated to him. The order in this case was communicated to him on 8-2-52. He had got a right of filing a memorial till 8-8-52. But he preferred only a memorial to the Govt. within that time i.e. on 22-7-52, which, however, was rejected as it was not submitted through proper channel, vide Memo. at Flag (V)

The order of dismissal was passed so recently in January July 52 in consultation with the M.P.S.C. There seems to be no case for reconsideration of the previous orders issued at (N). For orders whether the petition may be rejected.

22.12.1952

Please verify whether X above is correct.

224/22

11/31/12

Reference A.D.S's remarks on p 3 ante

submitted that the dismissal of a Govt Servant will not ipso facto disqualify him from practising at the Bar but he may be disqualified by the High Court - vide persons marked x and y of Legal Dept's opinion noted in another connection, flagged at (D)

on p 1 y (D)

y'm p 1 y (I)

M/30.12.1952

30.12.52
by
30/12/52

ADS II

Please see the note on page 1-3 ante. The version of Sri Anthappa Ex-AG? may be noted.

31/12/52

K.P. Kutty
31-12-52

N/ (Law)

SECRETARY TO GOVERNMENT
2 - JAN 53
HOME DEPARTMENT

A
~~The~~ draft order is submitted for approval.

M/5.1.1953

3.1.53
by
5.1.53

Issued as Cir Rt 46 dated 6-1-53
-pgj

Legal (S.O.) Dept.

Explanation II to Rule 8 of the Madras Civil Services (Classification, Control and Appeal) Rules, provides that the removal of a person from the civil service of the Government should not disqualify him from future employment, but that the dismissal of a person from the civil service of the Govt. should ordinarily disqualify him from future employment. There is no provision in the C.C.A. Rules providing that removal or dismissal of a Govt. servant should automatically operate as a bar against such Govt. servant practising as an Advocate.

2. The Indian Bar Councisls Act, 1926 (Central Act XXXVIII of 1926), consolidates the law relating to legal practitioners entitled to practise in courts. Sections 10 to 13 of that Act provide for the suspension or removal from practice of any Advocate found guilty of professional or other misconduct. Similarly sectons 12 to 15 of the Legal Practitioners Act, 1879 (Central Act XVIII of 1879), deal with the suspension and dismissal of pleaders convicted of criminal offences or guilty of unprofessional conduct. But there is no provision in either of the two Acts mentioned above under which the dismissal or removal of a Govt. servant will ipso facto disqualify him from practising at the Bar.

3. Attention is invited to the decision of the Calcutta High Court in the matter of Mukunda Lal Dhar (72 Indian Cases 831), in which it was held that in an application for permission to resume practice by a pleader who had entered Govt. service but was subsequently discharged, it was incumbent on him to make a full and complete disclosure of the facts leading to hiz removal from Govt. service. It may also be noted that when an executive officer of a temple, who was removed from service as a result of a disciplinary enquiry, applied to the High Court for admission as an Advocate, the High Court desired to peruse the papers relating to the appeal filed by the executive officer before Govt. In that case, the Rural Welfare Dept., in consultation with Home and Legal, decided to forward the correspondence relating to the appeal. It will be seen from the decision of the Calcutta High Court and the case of the executive officer mentioned above, that if in the present case the District Munsif is dismissed or removed from Govt. service, it will not ipso facto disqualify him from practising as an Advocate, but he may be disqualified by the High Court.

xxx
5-9-52

K.V. Rajagopalan,
5-9-52

/true extract/